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FILED

DEC 7 1962

JOHN F. DAVIS, CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1962.

No. 104.

STATE OF NEW JERSEY AND BOARD OF PUBLIC
UTILITY COMMISSIONERS OF THE STATE OF
NEW JERSEY,

Appellants,

vs.

NEW YORK, SUSQUEHANNA AND WESTERN
RAILROAD COMPANY,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY.

APPELLANTS' REPLY BRIEF.

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Since jurisdiction is necessarily interrelated with procedure, Appellee's distinction between the two is invalid.

This reply will be limited to Point I in Appellee's brief containing a subject raised for the first time on this appeal.

Appellee says, "The issue presented by this appeal does not really involve a question of jurisdiction of the I. C. C., but merely a question of procedure."

This is idle semantics, since it attempts an invalid distinction between procedure and jurisdiction.

The obvious fact is that jurisdiction nearly always depends upon procedure, the most basic example being the proper service of correct process on a defendant at the institution of an action; it would surely be as idle, as it is in the present instance, for the Appellee in such case to say, "this concerns not jurisdiction but mere procedure, since only the mechanics of service are in question."

Another example, among legions which will come to mind, might be the institution of an action in the federal court which should be brought in a state court, the faulty "procedure" consisting in the filing of the action in a court which lacks jurisdiction. Surely in that case the party could not be heard to say that this is a procedural distinction.

In this proceeding the Appellee sought to invoke the jurisdiction of the Interstate Commerce Commission, ignoring the jurisdiction of the State. The Appellee succeeded in persuading the Court below that its action was proper and we now have on the books what the State considers an erosion of its jurisdiction over discontinuance of the operation or service of a train operating wholly within the boundaries of a single state.

Appellee's argument that Appellants make a mere procedural distinction rests on Appellee's assumption that it has already established its right to relief under either Section 13a(1) or 13a(2). However, there is a fundamental difference between Sections 13a(1) and 13a(2) in that under the latter section, where intrastate trains are involved and primary State jurisdiction is therefore recognized, a full hearing on the merits, unlike the "procedure"

set forth in Section 13a(1), must be held before decision is made to continue or discontinue the trains. The fallacy of Appellee's argument is clearly demonstrated by the fact that, to this date, there has never been any such hearing.

Conclusion.

Appellants respectfully submit that the new issue raised by Appellee in Point I of its brief is without merit, and for the reasons heretofore stated in Appellants' briefs, the judgment of the Court below should be reversed.

Respectfully submitted,

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Dated: December 6, 1962.